

**EXHIBIT B**

**COMMUNICATIONS SPACES AND PATHWAYS**

[See attached diagram per Section 2(a) and Exhibit "A".]

**EXHIBIT C**  
**EQUIPMENT**

[See attached diagram per Section 2(a) and Exhibit "A".]

EXHIBIT D

EQUIPMENT ROOM PLAN

[See attached diagram per Section 2(a) and Exhibit "A".]

**EXHIBIT E**

**ROOFTOP SPACE**

[See attached diagram per Section 2(a) and Exhibit "A".]

**EXHIBIT F**

**SERVICES**

EXHIBIT G  
TECHNICAL SPECIFICATIONS

**EXHIBIT H**

**LICENSEE'S FINANCIAL AND TECHNICAL CAPACITY**

EXHIBIT I  
WORK PLAN

**EXHIBIT J**

**ACCESS REQUEST FORM**

**<BUILDING OWNER COMPANY>**

- a) Mr. or Ms. \_\_\_\_\_, of \_\_\_\_\_ (company), request permission to access the telecommunications equipment within the Building Communications Spaces of \_\_\_\_\_ on \_\_\_\_\_ (date), at approximately \_\_\_\_am/pm.
- b) For the purpose of \_\_\_\_\_ (detail below if necessary). The expected number of existing cable pairs effected by this action is \_\_\_\_\_.
- c) Will new or additional equipment be located within the telephone closets?  
\_\_\_\_(yes)/\_\_\_\_(no). Please describe any new/additional equipment being placed in the telephone closet on floor(s) \_\_\_\_\_.
- d) License Agreement # \_\_\_\_\_.
- e) The expected duration of this visit is \_\_\_\_\_ (hours/days).

Licensee  
(Name of Company)

By:

(Authorized Agent)

Date:

EXHIBIT K

CDS FEE

## EXHIBIT L

### REIT PROVISIONS

Licensee's REIT Representations, Warranties and Covenants. Licensors direct or indirect parent (a [STATE] real estate investment trust) is a real estate investment trust ("REIT"). In connection with certain REIT source of income laws and regulations ("REIT Rules") applicable to Licensors, Licensee represents, covenants and warrants to Licensors as of the date hereof and continuing for the Term:

1. Licensee is an established provider of the Services it provides Tenants from time to time as permitted hereby with at least twenty (20) business customers (excluding Tenants);
2. Licensee does not and shall not offer any Services to Tenants that it does not also offer to its other business customers;
3. Licensee has not and shall not customize any Services it provides to Tenants in order to fit a Tenant's particular needs (however, Licensee may offer its customers, including Tenants, a menu of some or all of the Services it provides to Tenants that are generally available to customers of Licensee, and such customers, including Tenants, can choose such Services they wish to receive from that menu;
4. Licensee will not offer or provide any telecommunications or other service at the Building which fails to comply with REIT Rules or would otherwise cause any income received by Licensors from Licensee or any Tenant to be deemed "non-qualifying income" for purposes of Sections 856(c)(2) [or 856(c)(3)] of the Internal Revenue Code;
5. Licensee will not offer or provide, without Licensors prior written consent, any telecommunications or other service at the Building other than (i) telephone and other communications, (ii) e-mail, (iii) video communications, (iv) electronic research, (v) internet access, and (vi) communications networking; and
6. Upon written request from Licensors from time to time, Licensee will inform Licensors of (i) the Tenants to which Licensee is providing any Services and (ii) the types of telecommunications or other services that Licensee is providing to such Tenants, and Licensee will make reasonable efforts to cooperate with Licensors to ensure that Licensors does not fail to qualify as a REIT, or otherwise incur non-qualifying income, for reasons relating to the terms of, or Services provided under, this License.

**EXHIBIT M**

**BUILDING RULES AND REGULATIONS**

## Schedule A

## Schedule B

### Emergency Generator Rider

All capitalized terms herein shall have the meaning ascribed to them in Exhibit A to the Agreement, unless expressly defined elsewhere in the Agreement or herein.

Licensee, subject to Licensors review and approval of Licensee's plans therefor, shall have the right to install a \_\_\_ kilowatt supplemental generator (for purposes of this Schedule B, the "Generator") to provide emergency additional electrical capacity to the Equipment during the License Term. The Generator shall be placed at the location outlined on Schedule A attached to this Schedule B (for purposes of this Schedule B, the "Generator Area"). Notwithstanding the foregoing, Licensee's right to install the Generator shall be subject to Licensors approval of the manner in which the Generator is installed and the manner in which any cables are run to and from the Generator to the Equipment and the measures that will be taken to eliminate any vibrations or sound disturbances from the operation of the Generator, including, without limitation, any necessary 2 hour rated enclosures or sound installation. Licensors shall have the right to require an acceptable enclosure to hide or disguise the existence of the Generator and to minimize any adverse effect that the installation of the Generator may have on the appearance of the Building and Property. Licensee shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Generator. Licensee shall not install or operate the Generator until Licensee has obtained and submitted to Licensors copies of all required Permits necessary for the installation and operation of the Generator. In addition to, and without limiting Licensee's obligations under the Agreement, Licensee shall comply with all applicable environmental and fire prevention Laws pertaining to Licensee's use of the Generator Area. Licensee shall also be responsible for the cost of all utilities consumed in the operation of the Generator. Notwithstanding anything herein to the contrary, if Licensee does not install the Generator on or before \_\_\_\_\_, 200\_, or if Licensee, after installation, removes the Generator from the Generator Area for reasons other than the repair and replacement of the Generator, Licensee's right to install and maintain the Generator and to use the Generator Area shall be null and void.

Licensee shall be responsible for assuring that the installation, maintenance, operation and removal of the Generator shall in no way damage any portion of the Building or Property. To the maximum extent permitted by applicable law, the Generator and all appurtenances in the Generator Area shall be at the sole risk of Licensee, and Licensors shall have no liability to Licensee if the Generator or any appurtenances are damaged for any reason. Licensee agrees to be responsible for any damage caused to the Building or Property in connection with the installation, maintenance, operation or removal of the Generator and, in accordance with the terms of Section 7 of the Agreement, to indemnify, defend and hold Licensors and the other Indemnitees harmless from all Claims including, without limitation, reasonable architects' and attorneys' fees (if and to the extent permitted by applicable law), which may be imposed upon, incurred by, or asserted against Licensors or any of the other Indemnitees in connection with the installation, maintenance, operation or removal of the Generator, including, without limitation, any environmental and Hazardous Materials claims. In addition to, and without limiting Licensee's obligations under the License, Licensee covenants and agrees that the installation and use of the Generator and appurtenances shall not adversely affect the insurance coverage for the Building. If for any reason, the installation or use of the Generator and/or the appurtenances shall result in an increase in the amount of the premiums for such coverage, then Licensee shall be liable for the full amount of any such increase.

Licensee shall be responsible for the installation, operation, cleanliness, maintenance and removal of the Generator and the appurtenances, all of which shall remain the personal property of

Licensee, and shall be removed by Licensee at its own expense at the expiration or earlier termination of the License. Licensee shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the Generator and appurtenances were attached. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other licensees, Tenants or Licensor. Licensee shall take the Generator Area "as is" in the condition in which the Generator Area is in as of the Commencement Date, without any obligation on the part of Licensor to prepare or construct the Generator Area for Licensee's use or occupancy. Without limiting the foregoing, Licensor makes no warranties or representations to Licensee as to the suitability of the Generator Area for the installation and operation of the Generator. Licensee shall have no right to make any changes, alterations, additions, decorations or other improvements to the Generator Area without Licensor's prior written consent. Licensee agrees to maintain the Generator, including without limitation, any enclosure installed around the Generator in good condition and repair. Licensee shall be responsible for performing any maintenance and improvements to any enclosure surrounding the Generator so as to keep such enclosure in good condition.

Licensor shall have the right to approve, in its sole discretion, Work Plans for improvements or alterations with respect to any Generator.

Licensee shall not engage, or cause or permit the engagement of, any contractor or subcontractor to perform installations, replacements, repairs or alterations to the Generator without the prior written approval of Licensor, which approval; *provided, however*, that Licensor may, in its sole discretion, designate a contractor or subcontractor to be engaged to perform any of the above-described work to any Generator, which contractor or subcontractor Licensee shall use for all such work to any Generator that is necessitated by Licensee's use of such Generators.

Licensee, upon prior notice to Licensor and subject to the Rules and Regulations, shall have access to the Generator and its surrounding area for the purpose of installing, repairing, maintaining and removing said Generator.

Licensee shall only test the Generator before or after Normal Business Hours and at a time mutually agreed to in writing by Licensor and Licensee in advance. Licensee shall be permitted to use the Generator Area solely for the maintenance and operation of the Generator, and the Generator and Generator Area are solely for the benefit of Licensee. All electricity generated by the Generator may only be consumed by Licensee in the Building.

Licensor shall have no obligation to provide any services, including, without limitation, electric current, to the Generator Area.

Licensee shall have no right to sublet the Generator Area or to assign its interest hereunder.

Notwithstanding anything to the contrary contained herein, if at any time during the Term Licensor determines in its reasonable discretion, that the Generator and/or any appurtenances interfere with the operations of the Building or the operations of any of the Tenants, then Licensee shall, upon notice from Licensor, cease any further operation of the Generator. From and after such notice by Licensor, Licensee shall have no further right to operate the Generator unless and until Licensee shall have redesigned and modified the Generator, and/or installations in a manner approved by Licensor, *provided however*, that Licensor's approval of such redesign and modification shall constitute the mere permission to operate the Generator, which permission shall in no event be construed to abrogate or diminish Licensor's rights or Licensee's obligations under the License.

During the Term, Licensee shall pay Licensors, as additional License Fees in the manner described in \_\_\_\_\_ the Agreement, the sum of \$\_\_\_\_\_ per \_\_\_\_\_, plus applicable tax thereon if any, for the Generator Area licensed by Licensee hereunder.

IN WITNESS WHEREOF, Licensors and Licensee have executed this Emergency Generator Rider in multiple original counterparts as of the day and year first above written.

LICENSOR:

*[INSERT LICENSOR NAME]*

By: \_\_\_\_\_

Name:

Title:

LICENSEE:

*[INSERT LICENSEE NAME]*

By: \_\_\_\_\_

Name:

Title:

## Schedule C

### Work Plan Rider

THIS WORK PLAN RIDER (this "Rider") is made part of that certain Telecommunications License Agreement (the "Agreement") dated \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Licensor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Licensee"). This Rider and the Agreement shall be referred to collectively herein as the "License."

Capitalized Terms. Any capitalized terms used but not defined in this Rider shall have the meaning given them in the Agreement.

Prior to commencing any work or installing or allowing any Equipment to be installed in or on the Premises, Licensee, at its sole cost and expense, shall submit to Licensor, for Licensor's written approval, detailed plans and specifications (which includes any amendments to or revisions thereof) of the planned installation, including details of the size and location of Equipment, use of all components of the Premises, and any plans for accessing the Building's Communications Spaces and Pathways in order to provide service to Tenants (the "Work Plan").

Licensee shall submit to Licensor its detailed plans and specifications with a notice, in BOLD type, on the first page of the Work Plan stating that: "THIS IS A REQUEST FOR YOUR APPROVAL. YOUR FAILURE TO RESPOND MAY CONSTITUTE APPROVAL OF THIS REQUEST." Licensor shall have \_\_\_\_\_ ( ) days from the date Licensor receives Licensee's request to approve, deny or request modifications or additions to the Work Plan. If Licensor disapproves Licensee's Work Plan, including modifying the Work Plan or requesting additional information, Licensee may revise its Work Plan to respond to Licensor's objections and resubmit the revised Work Plan, including any additional information Licensor may have requested, to Licensor within \_\_\_\_\_ ( ) days after Licensee receives Licensor's response. Licensor then has \_\_\_\_\_ ( ) days from the date Licensor receives Licensee's response to approve or disapprove the Work Plan. Licensor and Licensee may continue the foregoing response and resubmission mechanism until Licensee's Work Plan have been approved or finally disapproved by Licensor or until Licensee issues a notice to Licensor that Licensee shall not resubmit its Work Plan, in which case this Agreement shall be deemed terminated on the day Licensor issues Licensor's notice of final disapproval or on the date Licensor receives a termination notice from Licensee. Licensor's failure to respond to Licensee's initial request for approval or any subsequent request for approval as to resubmitted Work Plan, shall constitute Licensor's approval of such request.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Work Plan Rider in multiple original counterparts as of the day and year first above written.

LICENSOR:

*[INSERT LICENSOR NAME]*

By: \_\_\_\_\_

Name:

Title:

LICENSEE:

*[INSERT LICENSEE NAME]*

By: \_\_\_\_\_

Name:

Title:



## Schedule D

### Insurance Rider

THIS INSURANCE RIDER (this "Rider") is made part of that certain Telecommunications License Agreement (the "Agreement") dated \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Licensor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Licensee"). This Rider and the Agreement shall be referred to collectively herein as the "License."

Capitalized Terms. Any capitalized terms used but not defined in this Rider shall have the meaning given them in the Agreement.

Insurance Maintained by Licensor. Licensor shall maintain fire and extended coverage insurance on the Building in such amounts as Licensor's mortgagees, if any, shall require. Such insurance shall be maintained at the expense of Licensor and payments for losses thereunder shall be made solely to Licensor and/or the mortgagees of Licensor as their interests shall appear.

Insurance Maintained by Licensee. Prior to the commencement of any work, Licensee shall obtain and maintain, with carriers which at all times during the term of this Agreement maintain an A.M. Best rating of A/VIII or Standard and Poor's Insurance Solvency Review of A- or better, at its own expense, in amounts not less than those specified below, the following insurance:

In an amount equal to full replacement costs, all-risks property insurance (including, without limitation, sprinkler leakage and water damage) on all of its personal property, whether owned or leased, including removable trade fixtures and including the Equipment.

Workers' Compensation insurance in accordance with the laws of the state in which the Building is located.

Employers' liability insurance in an amount not less than [\$\_\_\_\_\_].

Commercial General Liability Insurance on an "occurrence basis" with a combined single limit per location of not less than [\$\_\_\_\_\_] per occurrence. The Commercial General Liability Insurance shall also include independent contractors coverage, broad form property damage endorsement, coverage for collapse, explosion and underground property damage, products liability and completed operations coverage for a two-year period following acceptance of the work, an endorsement naming Licensor, Licensor's Indemnitees and Licensor's designees as additional insureds, and blanket contractual liability insurance covering all indemnity agreements. The Commercial General Liability Insurance shall also include provisions for cross-liability and severability of interests, and an endorsement providing that the insurance afforded under Licensee's policy is primary insurance as respects Licensor and that any other insurance maintained by Licensor is excess and non-contributing with the insurance required hereunder.

Business Automobile Liability Insurance covering owned, hired and non-owned vehicles with limits of \$\_\_\_\_\_ and a combined single limit of \$\_\_\_\_\_ for bodily injury liability and property damage liability.

Excess liability (umbrella liability insurance) with limits of [\$\_\_\_\_\_].

All Risk Property Insurance covering all contractor's materials, equipment and supplies which are not paid for by Licensor and not intended to become a permanent part of the Building until completion and Final Acceptance (as described below) of the work by Licensor. Coverage is to be on a replacement cost basis and is to include the interests of Licensor, as its respective interests may appear.

Upon completion of the work, Licensee will deliver a notice to Licenser notifying Licenser of such completion. Licenser shall then have \_\_\_\_\_ ( ) business days to notify Licensee of its "Final Acceptance" of the work or its reason for not accepting the work; *provided*, that Licenser shall not unreasonably fail to provide its Final Acceptance. If for any reason Licenser shall fail to deliver a notice to Licensee as set forth in the previous sentence, then the Final Acceptance of the work by Licenser shall be deemed to have been given. If Licenser has timely notified Licensee of its reason for not accepting the work, Licensee shall use its best efforts to address the matters set forth in the notice by Licenser and shall again notify Licenser of its completion of the work as set forth herein and the other provisions set forth herein shall apply.

Except for the insurance called for in subsections (a), (b) and (c) above, all of Licensee's insurance required by this Agreement shall, without liability on the part of Licenser for premiums thereof, include the following: endorsement providing Additional Insureds of Licenser and the other Indemnitees and Licenser's designees \_\_\_\_\_ ( ) days' prior notice of cancellation, non-renewal or material changes to the terms of coverage to each named insured; and waiver of subrogation rights by Licensee in favor of Licenser and the other Indemnitees. Licensee shall, at Licenser's request from time to time, provide Licenser with a current certificate of insurance evidencing Licensee's compliance with this Schedule D.

Any type of insurance or any increase of its limits of liability not described above which Licensee requires for its own protection, or on account of statute, shall be its own responsibility and at its own expense.

The carrying of the insurance described herein shall in no way be interpreted as relieving Licensee of any responsibility or liability under this Agreement.

Should Licensee engage a contractor or subcontractor, the same conditions applicable to Licensee under this Agreement shall apply to each contractor or subcontractor, including but in no way limited to the indemnity and insurance clauses.

IN WITNESS WHEREOF, Licenser and Licensee have executed this Insurance Rider in multiple original counterparts as of the day and year first above written.

LICENSOR:

*[INSERT LICENSOR NAME]*

By: \_\_\_\_\_  
Name:  
Title:

LICENSEE:

*[INSERT LICENSEE NAME]*

By: \_\_\_\_\_  
Name:  
Title:

## **Exhibit H**

### **Cooper, Carvin Constitutional Analysis**

**CONSTITUTIONAL ANALYSIS OF THE FCC'S FURTHER  
NOTICE OF PROPOSED RULEMAKING, FCC 00-366**

January 22, 2001

Steven S. Rosenthal  
Hamish P.M. Hume

COOPER, CARVIN & ROSENTHAL, PLLC  
1500 K Street, N.W., Suite 200  
Washington, D.C. 20005  
(202) 220-9600

## INTRODUCTION

In 1999, the Commission issued its *Competitive Networks NPRM*, in which it proposed a rule that would require all owners of multiple tenant environments ("MTEs") to provide any and all communications providers nondiscriminatory access to their properties. In two voluminous submissions, the Real Access Alliance submitted comments arguing, *inter alia*, that this proposed rule would constitute a taking of property under the Takings Clause of the Constitution. In response, the Commission has now proposed a rule in the FNPRM whereby all communications providers will be prohibited from serving any MTE owner who refuses to provide the nondiscriminatory access that would have been required under the NPRM's nondiscriminatory access rule.

Unsurprisingly, the Real Access Alliance once again must point out that the Commission's proposed rule, which in substance will accomplish the identical result as would have been accomplished under the NPRM, will constitute a taking under the Fifth Amendment. The Constitution cannot be bypassed through the elevation of form over substance, and it is quite clear from the FNPRM that the intended effect as well as the actual effect of the proposed "prohibition" would be to require MTE owners to provide nondiscriminatory access to their properties to any and all communications carriers. The proposed requirement would therefore mandate a permanent, physical occupation of the MTE owners' property, triggering a *per se* taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). While the Commission may try to argue that it is only regulating the *terms* by which communications carriers and MTE owners may do business with one another, "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." *Id.* at

439 n.17. Indeed, in rejecting exactly the argument on which the Commission's new proposal must rely, the Supreme Court explained that "[t]he right of a property owner to exclude a stranger's physical occupation of his land cannot be so easily manipulated." *Id.*

The Real Access Alliance also must echo their earlier opinion that the Commission does not have, and has not been given, the authority to effect the taking that would ensue if the proposed rule were finalized. Nothing in the Communications Act supports the notion that the Commission can exercise Congress' power of eminent domain with respect to MTE owners, and there is abundant support for the proposition that absent very clear legislative authority, the Commission may not exercise that power. Moreover, the authorities hold that the legislation itself must be interpreted narrowly, so as not to imply or infer the existence of such a power. Thus, even if the Commission arranges for the MTE owners to receive some form of payment as putative just compensation for their loss of property, the absence of statutory authority to effect a taking would nonetheless prove fatal to the legality of the proposed rule. Indeed, it is far from clear whether the Commission may create a mechanism for just compensation whole cloth out of a statute in which Congress clearly made *no* provision for such a mechanism. Thus even if Congress could conceivably be seen to have granted the Commission the bare authority to take property from the MTE owners, the Commission's proposed mechanism would fall short of satisfying the Takings Clause.

As argued below, the Real Access Alliance believes that the constitutional problem with the FNPRM is every bit as serious and insurmountable as was the constitutional problem initially raised in the NPRM's proposed universal access requirement.

## **I. THE FCC CANNOT AVOID CONTRAVENING THE TAKINGS CLAUSE BY REGULATING LECs**

In its FNPRM, the FCC has proposed prohibiting LECs from providing service to customers in MTEs if the owners of the MTEs “maintain a policy that unreasonably prevents competing carriers from gaining access to potential customers located within the MTE.”<sup>1</sup> As the Commission acknowledges, the proposed prohibition “would almost certainly influence MTE owners to act in a manner similar to that which would be required by direct regulation.”<sup>2</sup> Indeed, there is no question that the Commission’s purpose in imposing the proposed prohibition is to have the desired “effect on the behavior of the owners of MTEs.”<sup>3</sup> The FCC does not disguise that in proposing to regulate the owners of MTEs “indirect[ly],” and not through the direct regulation proposed in the prior NPRM, it is seeking to avoid the Takings Clause obstacles that would be presented by direct regulation.<sup>4</sup>

The FCC cannot avoid a taking under the Takings Clause of the Fifth Amendment by substituting indirect regulation for direct regulation. If the effects of a direct regulation of MTE owners would constitute a taking, then a regulation of LECs which has the same effect on MTE owners as the direct regulation would also constitute a

---

<sup>1</sup> FNPRM, ¶132.

<sup>2</sup> FNPRM, ¶144

<sup>3</sup> FNPRM, ¶136

<sup>4</sup> FNPRM, ¶144

taking. Despite the suggestion in the FNPRM,<sup>5</sup> nothing in *Yee v. City of Escondido*, 503 U.S. 519 (1992) is to the contrary.

1. The Fifth Amendment of the United States Constitution provides “No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use without just compensation.” U.S. Const., Amendment V. Based on the fundamental principle that some property owners should not be required “to bear public burdens which, in all fairness and justice, should be borne by the public as a whole,” *Armstrong v. United States*, 364 U.S. 40, 49 (1960), the Takings Clause has matured into a robust protection of private property rights against a range of government actions and regulations. In particular, the Takings Clause provides an absolute protection against uncompensated *per se* takings, which are defined as occurring whenever there is a government-authorized, permanent physical occupation of private property. Central to this doctrine is the principle that if the government overrides a property owner’s right to exclude others from his property, it has effected a taking, regardless of the level of economic harm suffered by the private party. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

In *Loretto*, the Supreme Court held that a New York statute authorizing a cable television company to place cable equipment onto Ms. Loretto’s building constituted a taking under the Fifth Amendment. The decision rested upon the following basic principle:

[W]e have long considered a physical intrusion by government to be a property restriction of an unusually serious character for purposes of the Takings clause. Our cases further establish that when the physical

---

<sup>5</sup> *Id.*